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IAN F. BURNS & ASSOCIATES  
1575 DELUCCHI LANE, SUITE 222  
RENO, NV 89502

EXAMINER

BROCKETTI, JULIE K

ART UNIT PAPER NUMBER

3713

DATE MAILED: 11/19/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/876,546

Applicant(s)

JOHNSON, BRADLEY W.

Examiner

Julie K Brockett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 29, 2003 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 9-16 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, U.S. Patent No. 5,911,418 in view of Jones et al., U.S. Patent No. 5,913,726. Adams discloses a method for a card game including a jackpot component in a primary wagering game played by at least one player. Each player places a wager on the primary wagering game. A round of play is conducted in the primary wagering game with the players (col.

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2 lines 51-67). Each player having a predetermined arrangement of indicia resulting from completion of the round is designated a winner. The step of designating a winner requires a player to have a predetermined arrangement of indicia upon completion of the round utilizing indicia displayed on one or more cards dealt to the respective players as a result of the step of playing a round of the card game. For example, a player is a winner if his hand is a flush, full house, etc. Each winner then has an opportunity to win a prize that is randomly chosen from a group of prizes that includes an incrementing jackpot, i.e. progressive jackpot (col. 3 lines 13-22, 63-66). The game is conducted in a live form on a card table having a human dealer and using one or more decks of conventional playing cards (Fig. 1). The game may also be conducted in a virtual form on a video screen using one or more decks of virtual playing cards (col. 5 lines 26-27). In order to participate in the jackpot component, each player must place a side wager separate and distinct from the wager on the primary game. Adams further discloses providing an opportunity for each winner to win a prize that is randomly selected from a group of prizes, which includes an incrementing jackpot. Each winner has an opportunity to activate a jackpot button, which causes a segmented prize wheel to spin and randomly stop on one of a plurality of segments indicating a prize won. It is also obvious that the device to randomly select a prize could be an alternately lighting display case, a plurality of boxes or an animated character-racing device. All of these devices are well known in the art and do not show a criticality to the

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operation of the invention; consequently, it is up to the inventor's discretion which device to implement (Fig. 1; col. 3 lines 15-22, 43-66). Adams lacks in disclosing the game of blackjack or a separate side wager.

Jones teaches of a method for progressive jackpot gaming using the game of twenty-one otherwise known as blackjack. In order for a player to participate in the jackpot component of the game they must place a side wager separate and distinct from the wager on the primary wagering game. The incrementing jackpot is a progressive jackpot based on a percentage of the total amount of the wagers placed. When a particular prize randomly chosen for the player is the incrementing jackpot, the jackpot stops incrementing and is awarded to the player. The player then has the opportunity to play the primary game again (See Jones col. 3 lines 46-67, col. 4 lines 1-22). It would also be obvious to have an incrementing jackpot be a time-based jackpot which increments a predetermined amount at predetermined time intervals. By the applicant's own admission in the background of the invention section of his specification. Incrementing based on predetermined time intervals is well known in the art. Thus it is obvious to increment in this style such that players can visually see the jackpot increase over time; thus, gaining more excitement and interest in the game. Winners are then selected only from those players whom placed a side wager and have obtained a predetermined arrangement of indicia upon completion of the round (See Jones et al. col. 3 lines 25-37). It would have been obvious at the time the invention was made to

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play blackjack in the invention of Adams, many people enjoy blackjack and it is obvious to include it with the bonus wheel of Adams, so that blackjack players may also have a chance of winning a randomly selected jackpot. It is also obvious to have players place a side wager in order to participate in the jackpot. By having players place a side wager, the jackpot can be funded from the wagers, thereby, not having the gaming establishment lose money for awarding the jackpot. Jones also teaches of connecting players at a plurality of individual primary gaming devices that are electronically linked together to a common jackpot display showing the current amount of the incrementing jackpot. Wherein the incrementing jackpot on the common jackpot display is visible to the players at the gaming devices and configured such that when a player from any of the gaming devices win the incrementing jackpot, the incrementing jackpot can be stopped from incrementing at the respective gaming devices (See Jones et al. Fig. 1; col. 3 lines 13-23, 66-67; col. 4 lines 1-3).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, in view of Jones in view of McCrea Jr., U.S. Patent No. 5,911,626. Adams lacks in disclosing connecting individual card tables. McCrea teaches of a jackpot system for a live card game in which a plurality of individual card tables are electronically linked together to a common jackpot display showing the current amount of the incrementing jackpot. Wherein the incrementing jackpot on the common jackpot display is visible to the players at the card

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tables and configured such that when a player from any of the card tables wins the incrementing jackpot, the incrementing jackpot can be stopped from incrementing at the respective card table (See McCrea Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to connect multiple card tables to one progressive jackpot, that way many players could compete for the same jackpot and not have to be limited to only one card table.

Claims 4-6, 18-21 and 27-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, in view of Jones in further view of Tracy, U.S. Patent No. 5,280,909. Adams discloses all of the limitations mentioned including a random-jackpot generating device in the form of a rotatable-segmented prize wheel. The wheel has a jackpot button, i.e. spin the wheel button, and an electric motor operatively connected to the segmented prize wheel. The jackpot button is hand-operable to cause the segmented prize wheel to spin by means of the electric motor and randomly stop on one of the plurality of segments of the prize wheel indicating that a prize has been won (See Adams col. 1 lines 43-55). The prize wheel is built into a card gaming table (See Adams Fig. 1). Adams lacks in disclosing incrementing jackpots within a predetermined range from a minimum to a maximum jackpot.

Jones further discloses an incrementing device with a jackpot display operatively connected to the incrementing device for displaying the amount of the incrementing jackpot. The incrementing device including a switch device

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that is hand-operable to manually stop the incrementing of the jackpot after the incrementing jackpot is chosen (See Jones et al. col. 4 lines 18-20). It is obvious to include a manual switch in a progressive jackpot so that one may stop the jackpot after a player has won; consequently, the player will win the jackpot amount at the time of the win. Adams and Jones lack in disclosing a slot machine game with a progressive jackpot.

Tracy teaches of a gaming system with a progressive jackpot. The incrementing of the jackpot is progressive being based on increasing a predetermined percentage of a total amount of the wagers placed (See Tracy col. 5 lines 12-20). The jackpot is incremented within a predetermined range of amounts from a minimum to a maximum jackpot (See Tracy col. 4 lines 54-60). The Applicant also admits in the background of the invention section of the invention that it is well known to have jackpots increment to a maximum value where it remains until won by a player and then after reaching the maximum jackpot the incrementing jackpot returns to the minimum jackpot and continues incrementing in a continuously upwardly scrolling manner until the jackpot is won by a player. These concepts are well known throughout the art and are utilized so that a jackpot does have limits and the casino will not award a prize in which they are at a loss. Consequently, it is obvious to implement the various incrementing method into the invention of Adams. Moreover, the various incrementing methods do not show a criticality to the invention and any similar method may be used.



Tracy further teaches of a primary casino game comprising slots wherein each player having a predetermined arrangement of indicia upon completion of a round utilizes the indicia displayed on one or more reels of a slot machine as a result of the step of playing a round of slots is a winner. The slot machine uses an electro-mechanical slot machine having generally cylindrical reels that are rotatable. The slot machines are electronically linked together to a common jackpot display showing the current amount of the incrementing jackpot. The incrementing jackpot on the common display is visible to the players at the individual slot machines and configured such that when a player from any of the slot machines wins the incrementing jackpot. The incrementing jackpot is stopped from incrementing at the respective slot machine when won. Consequently, when the jackpot is selected it is stopped from incrementing (See Tracy Fig. 1; col. 2 lines 33-46; col. 8 lines 6-12). It would be obvious to use a virtual form on a video screen using a virtual slot machine have a plurality of virtual reels. Video slot machines are well known in the art and it is up to the inventor's discretion which type to use. Both serve the same purpose, of displaying indicia and indicating a win or loss. It would have been obvious at the time the invention was made to implement Adams's progressive jackpot method with a slot machine. Many players enjoy playing slot machines and by incorporating a randomly selected jackpot into a bonus game on a slot machine more players would be interested in playing the game.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, in view of Jones in further view of Tracy in further view of Casino Operations Management. Tracy lacks in specifically teaching that the fixed jackpot is the average of a minimum and maximum jackpot. The book Casino Operations Management teaches of slot and gaming statistics and creating or purchasing games wherein various ranges are used to create jackpots and payouts (See Casino Operations Management pg. 117, 314-315). It would be obvious that the minimum and maximum jackpots are calculated by first calculating an amount for a fixed jackpot and then creating a range around the fixed jackpot defined by the minimum and maximum jackpots which satisfies a predetermined payback percentage. Wherein the average value is within the range being substantially equal to the fixed jackpot. It is also obvious that the setting of the minimum and maximum jackpots includes determining how often and by what amount the incrementing jackpot increments. Furthermore, if a game operator first sets a value for a jackpot for a player to win, it is obvious to make a range above and below the jackpot value where the jackpot value is the average between the minimum and maximum jackpots. By doing this gaming operators can allow jackpots anywhere in this range and on average they will be only paying out the average jackpot value; thereby maintaining the hold percentage that they want. It is well known to a person of ordinary skill in the art that all of these statistics are well thought out and calculated by the casinos and game management

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companies, such that they profit from the game and do not take a loss.

Consequently, it is obvious to calculate jackpot values in Adams and Jones so that the owner of the machines profits.

### ***Response to Arguments***

Applicant argues that Adams does not enable Applicant's invention because Adams contains no other statement besides Column 3, lines 63-66 regarding progressive prizes. Contrary to Applicant's argument, Adams clearly outlines the creation of a successful game combining a primary game with a bonus game that randomly awards a progressive jackpot. One of ordinary skill in the art would be able to make and use Applicant's invention based only on their knowledge and the disclosure of Adams combined with Jones. Applicant alleges that Adams provides no teaching of how to configure a progressive jackpot in a bonus game. The Examiner disagrees, while Adams may not clearly explain how to fund the progressive jackpot, he clearly specifies how to implement one in a bonus game. Column 3 lines 43-66 of Adams discloses that once a player receives qualifying indicia in a primary game they can play the bonus game, i.e. spin the wheel. The wheel has either dollar amounts, or other prizes on it including a cruise, car or progressive jackpot. Consequently, one of ordinary skill in the art would clearly be able to place the words progressive jackpot on the wheel, spin the wheel and when the wheel lands on the progressive jackpot wedge, award a progressive jackpot to the player. One

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of ordinary skill in the art clearly has the knowledge to place a progressive jackpot wedge on the wheel and program the random number generator to select that outcome randomly at a certain probability. The Examiner however, does agree that Adams does not disclose how to fund the progressive jackpot.

The Applicant alleges that Jones only deals with the standard, known practice of awarding a progressive jackpot as a prize in a primary game. The Examiner disagrees with this interpretation. In Jones players play a primary card game for example poker. At the conclusion of the round of play, players may be rewarded for winning the primary game independent of whether or not they made a progressive wager. However, if they did place a progressive wager, the players may then be rewarded with a bonus. Therefore, the progressive jackpot is a bonus prize and not the prize associated with the primary game. The Examiner agrees that Jones does not randomly award the progressive jackpot as a prize. However, Adams does teach this limitation. The Examiner points out that Adams clearly discloses randomly awarding a progressive jackpot as a bonus in a game while Jones clearly discloses how to fund and display a progressive jackpot. Consequently, the combination of Adams and Jones clearly reads on the Applicant's invention.

The Applicant alleges that Tracy appears to teach away from Applicants' invention, and precise selection of game parameters, by suggesting that game parameters may be "randomly" selected. The Examiner notes that the features upon which applicant relies (i.e., precise selection of game parameters) are not

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recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Tracy is being used to illustrate that certain progressive jackpot features are well known throughout the art. Furthermore, Tracy awards the progressive jackpot in a random manner in a primary game.

The Applicant alleges that the Office appears to be making some unsupported statements of what ordinary skill in the art would be able to implement regarding progressive jackpots and wishes to have affidavits or references to support these statements. The Examiner has now supplied the reference Casino Gaming Management which shows the amount of mathematical calculations that one of ordinary skill in the art goes through when developing a game.

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie K Brockett whose telephone number is 703-308-7306. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg SPE can be reached on 703-308-1327. The fax phone numbers for the organization where this application or

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proceeding is assigned are 703-872-9306 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the customer service office whose telephone number is 703-308-1148.

  
Julie K Brockett  
Examiner  
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